

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CUMBERLAND COUNTY
INDICTMENT NO. 19-11-1113 S/B
A-

| | | |
|----------------------|---|------------|
| STATE OF NEW JERSEY, |) | |
| |) | |
| |) | TRANSCRIPT |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | OF |
| JOSEPH S. DIXON, |) | |
| |) | |
| |) | |
| Defendant. |) | PLEA |

Place: Cumberland County Courthouse
60 West Broad Street
Bridgeton, NJ 08302

Date: November 20, 2019

BEFORE:

THE HONORABLE ROBERT G. MALESTEIN, J.S.C.

TRANSCRIPT ORDERED BY:

THOMAS B. REYNOLDS, ESQ.
Reynolds & Horn, PC

APPEARANCES:

BRIAN UZDAVINIS, ASSISTANT PROSECUTOR
Attorney on behalf of the State of New Jersey

ANDREW M. BUTCHKO, ESQ.
Helmer, Conley & Kasselmann, P.A.
Attorney on behalf of the Defendant

Sarah D'Agostino, CTR
The TYPE-RIGHT-ER
(856) 881-2422
FAX NO. (856) 494-7806
E-mail: Cvendzules@comcast.net
Audio Recorded
Audio Operator, Ana Garcia

INDEX

WITNESSES:

FOR THE STATE DIRECT CROSS REDIRECT RECROSS

(No Witnesses Sworn)

FOR THE DEFENDANT

Joseph Dixon 9 12

EXHIBITS IDENTIFICATION EVIDENCE

(No Exhibits)

COURT DECISION - 12

Colloquy

(Whereupon Proceeding Commenced at 3:40:13 p.m.)

THE COURT: What's the defendant's name again?

MR. BUTCHKO: Joseph Dixon.

THE COURT: State v. Joseph Dixon. We're on the record and it is under PROMIS/Gavel 19, double zero, 1626. Counsel, note your appearances.

MR. UZDAVINIS: Good afternoon, Your Honor. Deputy Attorney General Brian Uzdavinis appearing on behalf of the State.

MR. BUTCHKO: Good afternoon, Your Honor. May it please the Court, Andrew Butchko of the law firm Helmer, Conley, and Kasselmann appearing on behalf of Joseph Dixon.

THE COURT: Okay. Counsel, go ahead. I'll hear from you.

MR. BUTCHKO: Thank you, Judge. Judge, my client is here today to enter guilty pleas to an accusation, a two count accusation, 19-11-1113 A/B. He's going to enter a guilty plea to counts one and two of that accusation charging him with aggravated assault in the third degree.

In exchange for his guilty plea there are no dismissals, but the State is prepared to recommend a sentence of probation conditioned upon 364 days in county jail. The defendant as part of the plea is

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

1 agreeing to a lifetime forfeiture of public office
 2 employment and then I want to note that the Defense at
 3 the time of sentencing intends to move for a civil
 4 reservation upon notice to the State and the Plaintiff
 5 returnable on the day of sentencing, those are the terms
 6 of the plea agreement, Judge.

7 THE COURT: Does the State have anything to
 8 add to that?

9 MR. UZDAVINIS: No, that's essentially
 10 correct, Your Honor. The plea forms, that are all
 11 completed for you, attached to that is a copy of our
 12 signed written negotiated plea agreement that spells out
 13 these terms. I also have for you a copy of a consent
 14 order signed ordering a lifetime ban and forfeiture of
 15 public office and employment.

16 This is a negotiated plea agreement where in
 17 exchange for defendant's waiver of indictment and plea
 18 of guilty to an accusation charging two counts of third
 19 degree aggravated assault and entering that consent
 20 order, the State in exchange has agreed to recommend a
 21 sentence of probation conditioned on 364 days in county
 22 jail. And we're aware as well, the pending motion for
 23 the civil reservation.

24 THE COURT: Terrific. Did you guys actually
 25 -- do you have an actual accusation prepared?

Colloquy

5

1 MR. BUTCHKO: I'm gonna hand it up to --

2 THE COURT: You can hand it -- all of it up to
 3 me and we'll go through it now then. Okay. Sir, can
 4 you raise your right hand please?

5 J O S E P H D I X O N, DEFENDANT, SWORN.

6 THE COURT: Okay. You can put your hand down
 7 and relax. What I need to do with you right now is I'm
 8 going to review with you what your rights are and then
 9 I'm going to review with you the terms of the plea
 10 agreement itself.

11 First and foremost, we're going to talk about
 12 your right to an indictment by a Grand Jury. You have a
 13 constitutional right to have the State present this to
 14 the Grand Jury for their consideration as to whether or
 15 not there is probable cause that these crimes were
 16 committed and that you were in fact the one who
 17 committed the crimes.

18 You're going to waive that right to a Grand
 19 Jury proceeding today, but as you know the defendants
 20 don't have a right to be present at the Grand Jury and
 21 your attorney doesn't have a right to be there either.
 22 It's just the State presenting witnesses, but you're
 23 gonna nevertheless waive that constitutional right
 24 today. Do you understand that?

25 THE DEFENDANT: Yes.

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

1 THE COURT: Do you understand that whether
2 it's an accusation or whether it is an indictment, you
3 still would have retained the right to have a jury
4 trial? At that jury trial the State would have been
5 required to prove their case against you beyond a
6 reasonable doubt. Your attorney would have had an
7 opportunity to cross-examine the State's witnesses,
8 would have had an opportunity to bring in witnesses on
9 your behalf if you so desired.

10 At the time of trial if you wanted to, you
11 could have testified or if you wanted to remain silent
12 at trial as is your right, you could have done that as
13 well. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you're
16 pleading guilty to two third degree aggravated assaults,
17 both count one and two of Accusation 19-11-113?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that third
20 degree crimes carry with it up to five years in State
21 Prison and a fine of up to \$15,000.00? You're not
22 getting that, but that is the maximum, do you understand
23 that?

24 THE DEFENDANT: Yeah.

25 THE COURT: Do you understand that in exchange

Colloquy

7

1 for your plea of guilty to this charge within the
2 indictment, here's what's going to happen at the time of
3 sentencing, the State is going to recommend a sentence.
4 That sentence is going to be 364 days in the Cumberland
5 County Jail and a term of probation, which will be in
6 the Court's discretion which can be anywhere between one
7 and five years. The attorneys will make their arguments
8 depending -- your attorney will argue for less, your --
9 the State will argue for whatever it is that they deem
10 to be appropriate. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: There will be certain mandatory
13 costs that you're going to have to cover as a result of
14 this plea. There will be two \$50.00 VCCB penalties, two
15 \$75.00 Safe Street Assessments, one \$30.00 law
16 enforcement penalty. There will be a \$15.00 per month
17 probation supervision fee. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Another part of the -- the plea is
20 that you are going to be forfeiting any and all future
21 public employment and, unfortunately, that probably
22 means any pension rights at this point are going to be
23 gone as well; right?

24 THE DEFENDANT: Yes.

25 THE COURT: So you understand all that and you

1 don't have a problem with that?
2 THE DEFENDANT: No.
3 THE COURT: You had an opportunity to go
4 through all of these plea papers with your attorney and
5 you put your initials on the bottom of each page and
6 signed the very last page; correct?
7 THE DEFENDANT: Yes.
8 THE COURT: And you also, in fact, even
9 executed an order on the waiver of the indictment today
10 and you executed the order of forfeiture for employment
11 that you know is going to be effective as well; right?
12 THE DEFENDANT: Yes.
13 THE COURT: Do you have any questions about
14 the plea, what your rights are or what you can expect by
15 way of a sentence?
16 THE DEFENDANT: I do not.
17 THE COURT: You're satisfied with the services
18 of your attorney?
19 THE DEFENDANT: Yes.
20 THE COURT: Are you under the influence of any
21 drugs, medication or alcohol at this time that would
22 impair, influence or affect your ability to make a
23 decision today?
24 THE DEFENDANT: No.
25 THE COURT: And you don't have any questions

J. Dixon - Direct - Mr. Butchko 9

1 for him or me regarding the plea or the rights; correct?
2 THE DEFENDANT: I do not.
3 THE COURT: And you are a citizen of the
4 United States?
5 THE DEFENDANT: Yes.
6 THE COURT: You can read and write English?
7 THE DEFENDANT: Yes.
8 THE COURT: Counsel, why don't you go ahead
9 and a get a factual basis for the two different counts
10 if you could.
11 MR. BUTCHKO: Thank you, Your Honor.
12 DIRECT EXAMINATION BY MR. BUTCHKO:
13 Q. Joseph, um, were you in the City of Millville
14 on February 25th, 2018?
15 A. Yes.
16 Q. And you were a police officer; correct?
17 A. Yes.
18 Q. You worked as a police officer that day?
19 A. Yes.
20 Q. And you were in uniform?
21 A. Yes.
22 Q. Now, on that date you had occasion to make an
23 arrest of an individual, a female, with the initials
24 A.C.; correct?
25 A. Yes.

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

1 Q. And during that arrest did you agree that you
2 recklessly caused significant bodily injury to her?
3 A. Yes.
4 Q. In fact, she suffered broken ribs in the
5 course of that arrest; correct?
6 A. Yes.
7 Q. And would you agree that you were -- you used
8 excessive force during the course of that arrest? In
9 other words, you could have used less force than you
10 used in order to accomplish the arrest; correct?
11 A. Yes.
12 MR. BUTCHKO: I believe that's sufficient,
13 Judge.
14 THE COURT: It is.
15 MR. BUTCHKO: As to Count One.
16 THE COURT: Counsel.
17 MR. UZDAVINIS: I can address both counts
18 together, Your Honor. (Inaudible).
19 THE COURT: Okay. Go ahead then. Go to the
20 second count.
21 BY MR. BUTCHKO:
22 Q. Now, you were also in the City of Millville on
23 March 24th, 2018; correct?
24 A. Yes.
25 Q. And again, you were working as a police

J. Dixon - Direct - Mr. Butchko

11

1 officer in uniform?
2 A. Yes.
3 Q. And on that occasion you also had occasion to
4 make an arrest this time of a female with the initials
5 T.J.; correct?
6 A. Yes.
7 Q. And would you agree that in the course of that
8 arrest that you recklessly caused significant bodily
9 injury to her?
10 A. Yes.
11 Q. And during that arrest you took her to the
12 ground; correct?
13 A. Yes.
14 Q. And you used pepper spray on her?
15 A. Yes.
16 Q. And you later learned that she had harmed her
17 wrist -- her hip when she was taken to the ground;
18 correct?
19 A. Yes.
20 Q. And would you agree that you used more force
21 during the arrest than was necessary under the
22 circumstances?
23 A. Yes.
24 MR. BUTCHKO: I believe that's sufficient,
25 Judge.

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

1 THE COURT: Go ahead, Counsel.

2 CROSS-EXAMINATION BY MR. UZDAVINIS:

3 Q. Just to be clear with respect to both counts
4 one and counts -- I'm sorry, counts one and count two.
5 In acting recklessly with regard to both counts, you did
6 so under circumstances manifesting extreme indifference
7 to the value of human life as stated in the accusation
8 you're pleading guilty to?

9 A. Yes.

10 Q. And you -- uh, you also acknowledged by
11 pleading guilty to this accusation with respect, once
12 again, to both counts one and two involving victims
13 identified as initials A.C. and T.J. respectively that
14 in effectuating those arrests you did indeed use
15 excessive force, meaning specifically force that was in
16 excess of that which would have been reasonably
17 necessary to effectuate that -- those arrests?

18 A. Yes.

19 MR. UZDAVINIS: Okay. That's all, Your Honor.

20 THE COURT: Any follow-up, Counsel?

21 MR. BUTCHKO: No, Your Honor. Thank you.

22 THE COURT: No. Okay. I'm satisfied based on
23 the representation of Counsel, my review of the plea
24 agreement, my colloquy with the defendant, his answers
25 in my questions, his answers to the attorneys plural

Court Decision

13

1 questions, that he has knowingly, voluntarily,
2 intelligently waived his right to a Grand Jury
3 presentation and his right to a trial.

4 He understands the maximum penalties
5 associated with the plea of guilty to counts one and two
6 of Accusation 19-11-113 charging him with aggravated
7 assault a viol -- third degree offenses in violation of
8 2C:12-1(b)(7). And he understands what the plea calls
9 for by way of a sentencing recommendation.

10 There is now a factual basis that would
11 support the entry of the plea to both counts one and two
12 of the accusation in terms of the reckless indifference
13 standard because that particular part of the statute
14 does deal separately with other issues and other
15 requisite *mens rea*. So I will make that finding.

16 We will set sentencing -- Ana, what's that
17 date in January that I have? The 6th?

18 THE COURT CLERK: January -- January 3rd.

19 THE COURT: Lets -- we can do it -- I know
20 that there's probably going to be -- there's going to be
21 some paperwork because there is going to be an argument
22 made at the time of sentencing -- well, among other
23 arguments, for the civil reservation issue that the
24 Court is going to need to determine at that time. I
25 want to give Counsel enough time. And in our conference

1 very briefly that we had in the back to discuss the
2 plea, we talked in terms of sentencing date, but I think
3 Counsel indicated that he might have a trial coming up.
4 So bring it into January, lets talk in terms
5 of dates. So the 3rd is the first Friday after the New
6 Year. The 10th, the 17th, the 24th, any of those dates
7 good for you or better than the other?
8 MR. BUTCHKO: Judge, I -- it's my
9 understanding we won't be at trial on Fridays, so any
10 Friday in January would be good.
11 THE COURT: What will give you enough time to
12 make sure everything is done? If I make it -- how about
13 I make it the 17th?
14 MR. BUTCHKO: That's fine, Judge.
15 THE COURT: The middle of the month.
16 MR. BUTCHKO: That's fine.
17 MR. UZDAVINIS: Could we request a ready hold,
18 Your Honor?
19 THE COURT: Do you want to do that in the
20 afternoon or do you want to do --
21 MR. UZDAVINIS: Either late morning or early
22 afternoon.
23 THE COURT: Is 1:30 better time for everybody?
24 MR. BUTCHKO: No, anytime, Judge.
25 THE COURT: Anybody in the back have an

Colloquy

15

1 opinion one way or the other? I presume since they're
2 here today they want to be here for that. So why don't
3 we make it the 17th at 1:30 in the afternoon. Okay.
4 MR. BUTCHKO: Okay. Thank you very much,
5 Judge.
6 THE COURT: Sometimes it's just easier in the
7 afternoon and there's less of a crowd and I have a
8 little bit more time in the event that people need to be
9 heard. Okay.
10 MR. UZDAVINIS: Thank you, Your Honor. Um,
11 could for purposes of the presentence report, I did
12 bring a packet of discovery, I think --
13 THE COURT: You can probably drop it off --
14 he's -- in fact, he's going to go downstairs right now.
15 I'm sorry. I should have said that out loud. They
16 might need you to come back because it's late in the
17 day. Take the elevator to the first floor. When you
18 get out, go to the left. The last office area on the
19 left before you hit the metal detector is Criminal Case
20 Management. You're gonna go talk to them. A probation
21 officer needs to interview you to prepare what's called
22 a presentence report.
23 Your attorney will get a copy, I get a copy,
24 and the State will get a copy. Your attorney will in
25 all probability review it with you before -- well,

EXHIBIT D--Dixon Motion (Capps v. Millville, et als.)

1 either on the -- typically it's on the date that you
2 come in for sentencing, but they upload them sometimes
3 now into eCourts, so your attorney should have access to
4 that before that date, so he might review it with you
5 before then. So they need to interview you for that.

6 You might need to come back on a different
7 date, depending on what -- whether they have somebody
8 available to interview you now. So, Counsel, you can go
9 drop that off to Criminal Case Management and they'll
10 have an opportunity -- they can have that if they want
11 to for the presentence report and go from there.

12 MR. UZDAVINIS: Thank you. I should have
13 added as well, Your Honor, that we are set up to have
14 the defendant processed today as well.

15 THE COURT: Okay. Perfect. So you need to
16 follow-up with that too. So you might need to get --
17 where -- where are you going to do that?

18 MR. UZDAVINIS: Our detectives coordinated
19 with the sheriff.

20 THE COURT: Sheriff?

21 MR. UZDAVINIS: Yeah.

22 THE COURT: So you're going to go down to the
23 second floor first. You have the documents? You're
24 taking him down? Okay. So we have a sheriff's officer
25 -- that's two stops then. You're going to go

Colloquy

17

1 downstairs, they live scan you, process the -- process
2 the warrant or the summons, whatever it is -- summons?

3 MR. UZDAVINIS: Yeah, it's the complaint
4 summons.

5 THE COURT: Okay. The summons. I just want
6 to make sure he doesn't get taken into custody.

7 MR. UZDAVINIS: No.

8 THE COURT: It's a summons. You're going to
9 be -- you're going to be printed. Then you can go
10 downstairs, stop into to Criminal Case Management, if
11 they can't see you today they're going to give you a
12 date to come back. Okay?

13 THE DEFENDANT: Okay.

14 THE COURT: All right. Very good. Good luck
15 to you guys.

16 MR. BUTCHKO: Thank you, Judge.

17 THE COURT: We'll see you in January.

18
19 (Whereupon Proceeding Concluded at 3:53:56 p.m.)

20 - - - - -
21
22
23
24
25

CERTIFICATION

I, SARAH D'AGOSTINO, CTR, the assigned transcriber,
do hereby certify the forgoing transcript of proceedings
on November 20th, 2019, JAVS, 2019-11-20, Index 3:40:13
to 3:53:56, Cumberland County Superior Court, is
prepared in full compliance with the current Transcript
Format for Judicial Proceedings and is a true and
accurate compressed transcript of the proceedings as
recorded.

SARAH D'AGOSTINO
/S/ SARAH D'AGOSTINO, AOC# 696

THE TYPE-RIGHT-ER

DATE: 12/6/19